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Concordia Electric Cooperative, Inc. and International Brotherhood of Electrical Workers, Local Union No. 788, AFL-CIO. Case 15-CA-13053-2

May 11, 1995

DECISION AND ORDER

**BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING**

Upon a charge filed on February 16, 1995, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on February 24, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 15-RC-7801. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer admitting in part and denying in part the allegations in the complaint, and asserting certain affirmative defenses.

On April 17, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On April 20, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 3, 1995, the Respondent filed a response. On May 4, 1995, the Charging Party filed a statement in support of the motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answers and response to the Notice to Show Cause, the Respondent admits its refusal to bargain with the Union, but attacks the validity of the Board's certification of the Union on the ground that the Respondent is a "political subdivision" within the meaning of Section 2(2) of the Act, and is therefore exempt from the Board's jurisdiction.

All representation issues raised by the Respondent, including the jurisdictional issue, were or could have been litigated in the prior representation proceeding.¹

¹ The Respondent's contention that it is an exempt "political subdivision" was fully considered by the Board in the underlying representation proceeding. See 315 NLRB 752 (1994). Although the Respondent's answer also denies the appropriateness of the unit, we find that the Respondent's denial does not raise any litigable issue

The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a nonprofit Louisiana corporation, with an office and place of business at Jonesville, Louisiana, has been engaged in the distribution and retail sale of electrical energy. During the 12-month period ending January 31, 1995, the Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000 and purchased and received at its facility goods valued in excess of \$5000 directly from points outside the State of Louisiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 21, 1993, the Union was certified on January 10, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All full and regular part-time service, maintenance and clerical employees employed by the Employer at its Jonesville, Louisiana facility, including service linemen, service apprentices, apparatus technicians, construction lineman, construction apprentices, construction lead linemen, warehouse employees, fleet mechanics, dispatchers, meter technicians, meter testers, staking apprentices, cashiers, billing clerks, and accounting clerks, but excluding all confidential employees, guards, and supervisors as defined in the Act.

in this proceeding. Under the Board's Rules, the Respondent had the opportunity to litigate the unit issue in the representation proceeding. The Respondent, however, chose not to do so, and instead entered into a Stipulated Election Agreement which, inter alia, set forth the appropriate collective-bargaining unit. By entering into this stipulation, the Respondent agreed that the unit described there was appropriate. Accordingly, we find that the appropriate unit is as stated in the complaint.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About February 15, 1995, the Union, by letter, requested the Respondent to bargain and, since about February 23, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 23, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Concordia Electric Cooperative, Inc., Jonesville, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Electrical Workers, Local Union No. 788, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employ-

ment and, if an understanding is reached, embody the understanding in a signed agreement:

All full and regular part-time service, maintenance and clerical employees employed by the Employer at its Jonesville, Louisiana facility, including service linemen, service apprentices, apparatus technicians, construction lineman, construction apprentices, construction lead linemen, warehouse employees, fleet mechanics, dispatchers, meter technicians, meter testers, staking apprentices, cashiers, billing clerks, and accounting clerks, but excluding all confidential employees, guards, and supervisors as defined in the Act.

(b) Post at its facility in Jonesville, Louisiana, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 15 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 11, 1995

William B. Gould IV, Chairman

James M. Stephens, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Brotherhood of Electrical Workers, Local Union No. 788, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full and regular part-time service, maintenance and clerical employees employed by us at our Jonesville, Louisiana facility, including service linemen, service apprentices, apparatus technicians, construction lineman, construction apprentices, construction lead linemen, warehouse employees, fleet mechanics, dispatchers, meter technicians, meter testers, staking apprentices, cashiers, billing clerks, and accounting clerks, but excluding all confidential employees, guards, and supervisors as defined in the Act.

CONCORDIA ELECTRIC COOPERATIVE, INC.